IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9711 of 1999
with
SPECIAL CIVIL APPLICATION No 9708 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BRISK SURGICAL COTTON LTD.

Versus

A A PATEL

Appearance:

1. Special Civil Application No. 9711 of 1999
M/S THAKKAR ASSOC. for Petitioner No. 1
MR PR ABICHANDANI, AGP for Respondent No. 1
MR KS JHAVERI for Respondent No. 2

2. Special Civil Application No. 9708 of 1999
M/S THAKKAR ASSOC. for Petitioner No. 1
MS NANDINI JOSHI, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/07/2001

COMMON ORAL JUDGEMENT

Rule. Mr KS Jhaveri, learned counsel for respondent No. 2 waives service of Rule respondent No.

2. At the suggestion of the Court, Ms Nandini Joshi, learned AGP and Mr PR Abichandani, learned AGP waive service of Rule for respondent No. 1 in Special Civil Application Nos. 9708 and 9711 of 1999 respectively.

2. In these petitions under Article 226 of the Constitution, the petitioners have challenged the order dated 30.9.1999 of the State Government in Revision Application Nos. 189 and 190 of 1998 under Section 48 of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act").

3. By the said order, the State Government set aside the orders passed by the Director of Agricultural Marketing and Rural Finance who had held in favour of the petitioners that the petitioners are not liable to pay market fees. The petitioners had brought within the limits of respondent No.2-Market Committee cotton for the purpose of manufacturing absorbent cotton wool. When the respondent-APMC raised a demand for payment of market fees under the Act, according to the petitioners, the petitioners filled in Form No. V in September, 1995 and declared that in view of the provisions of sub-rule (2) of Rule 48 of the Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter referred to as "the Rules") no fees were liable to be paid on cotton brought from the outside market area into the market area for the use therein by the industrial concerns situated in the market area. It was submitted by the petitioners that the raw cotton was brought into the market area only for the purpose of manufacturing absorbent cotton wool and, therefore, the petitioners were entitled to exemption as provided by the aforesaid sub-rule (2) of Rule 48.

The APMC, however, rejected the claim for exemption on the ground that Form No. V was filled in after the expiry of the relevant years 1993-94 and 1994-95. The petitioners, therefore, approached the Director of Agricultural Marketing and Rural Finance who held in favour of the petitioners, but the State Government reversed that view and held against the petitioners.

4. At the hearing of these petitions, Mr Pahwa, learned counsel for the petitioners has submitted that when the petitioners had used the cotton for industrial purpose, the Government ought not to have interfered with the order of the Director of Agricultural Marketing and Rural Finance merely because Form No. V was filled in after the expiry of two year/s. It is submitted that the

only reason for not filling in From No. V was that the petitioners were not aware that such form was required to be filled in.

5. On the other hand, Mr KS Jhaveri, learned counsel for the respondents submits that apart from the late filing of the declaration in Form No. V, the petitioners have also not made available the relevant record for inspection of the Committee. It is submitted that the Committee was required to look into the transactions whether the material was brought within the market area only for the purpose of industrial use by the concerned entity or whether the material was brought within the market area and sold to another party or to a sister concern and to ascertain whether it was necessary for the APMC to look into the record or whether the requirements of the Rules were complied with or not.

The learned AGPs have supported the order passed by the State Government.

6. Having heard the learned counsel for the parties, it appears to the Court that interests of justice would be served if the matter is remanded back to the APMC with certain directions and the petitioners are required to be deposit some amount without prejudice to the rights and contentions of the parties.

7. It is accordingly directed that -

(i) without prejudice to their rights and contentions, the petitioners shall deposit 25% (twenty five percent) of the amount/s demanded by the APMC for the year 1993-94 and 1994-95 within one month from today.

(ii) upon the amounts being deposited, the APMC shall issued notices to the petitioners for their representatives to remain present with all the records for the purpose of ascertaining whether market fees were leviable or were exempted for the years 1993-94 and 1994-95.

(iii) the competent authority of the APMC shall examine the record and after giving the petitioners an opportunity of being heard, the competent authority shall pass appropriate orders in accordance with law.

(iv) the petitioners shall cooperate for expeditious disposal of the inquiry as per the above directions.

7. In view of the above directions, these petitions are allowed. The orders dated 26.11.1998 (Annexure "H") in Appeal Nos. 1 and 2 of 1997 passed by the Director of Agricultural Marketing and Rural Finance and the orders dated 30.9.1999 (Annexure "I") in Revision Application Nos. 189 and 190 of 1998 passed by the Deputy Secretary (Agriculture), Agriculture and Cooperation Department are hereby quashed and set aside with liberty to the APMC to take fresh decision in the matter after giving the petitioners an opportunity of being heard and without being influenced by any observations made in the orders of the Director of Agricultural Marketing and Rural Finance or in the orders passed by the State Government.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

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